IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

SECOND APPEAL NO. 46 OF 2006
WITH
CIVIL APPLICATION NO. 96 OF 2006

Mrs. Mariana D'Costa,
widow of late Paul D'Costa,
major of age, business,
residing near the Church,
Sasmolem, Baina, Goa, and
managing the business of Studio Dhond,
Shop No. 32, 1st floor, Municipal Market,
Vasco-da-Gama, Goa. .... Appellant

Versus

Shri Krishna Jagannath Dhond,
son of late Jagannath Dhond,
aged 69 years, businessman,
residing at Flat No.2, Bldg. No.4,
Beach View Co-op. Hsg. Society Ltd.,
Baina, Vasco-da-Gama, Goa. ... Respondent

Shri Arun Bras De Sa, Advocate for the Appellant.
Shri D.V. Patkar, Advocate for the Respondent.

CORAM : **P.V. KAKADE, J.**

DATE : **6th November, 2006**

ORAL ORDER :

Heard the learned Counsel for both the parties. The defendant has filed this appeal against the judgment and order passed by Additional District Judge, South Goa, Margao dismissing the appeal and confirming the

judgment and decree passed by trial Judge in Regular Civil Suit No. 40/2000/D.

2. I heard the learned Counsel for both the parties. Perused the record. The plaintiff filed the suit submitting that he was lessee of the shop no. 32 belonging to the Mormugao Municipal Council, situated on the first floor of the Municipal market at Vasco since last 40 years prior to filing of the suit in the year 2000. The plaintiff sought to make out the case that he had started a photography business in the said shop no. 32 under the name of “Studio Dhond”. He was unable to carry out his business and, therefore, he entrusted the same on management to the late husband of the defendant by name of Paul D'Costa, about 28 years back (i.e. in the year around 1972), on payment of royalty of Rs. 800/- per month. This arrangement was continued until the death of late Paul D'Costa about 19 years before the suit could be filed i.e. around 1982. After the death of late Paul D'Costa, the defendant requested the plaintiff to continue the management and to conduct the business, as she had no other source of income, subject to the payment of royalty of Rs. 800/- per month. Plaintiff's case was to the effect that defendant paid him royalty up to December 1997, but thereafter stopped paying the amount from January 1998 onwards. In March 2000,

the plaintiff approached the defendant seeking payment of arrears of royalty or else he informed that he would terminate the management of the business and take back the same. Subsequently, he found that the defendant had complained that he had put locks on the business premises. Hence, a legal notice to the defendant came to be issued terminating the arrangement of management and calling upon the defendant to hand over the possession of the business in shop no. 32 within 14 days. Since the defendant failed to do so, the suit came to be filed. The defendant resisted the suit on various grounds with basic bone of contention, alleging that there was a landlord tenant relationship between the parties. Plaintiff had leased to her late husband his two business premises, one at Baina and the other at the suit shop no. 32 and her husband was running the business of photography in both the shops and both the business premises were in his possession and control and as such the suit was sought to be dismissed with costs.

3. The learned trial Judge after hearing both the parties on the basis of available evidence on record came to the conclusion that plaintiff had proved that defendant was allowed to manage and conduct the business on payment of royalty of Rs. 800/- per month. It was further held

that defendant was in arrears of payment of royalty as alleged, and as such plaintiff was entitled to recover the premises and the business which was given for management. It was further held that the defendant failed to prove that there was relationship of landlord tenant between the parties and finally suit came to be decreed.

4. The appeal was carried to the District Court. The learned Additional District Judge after hearing both the parties was of the view that the reasoning adopted and finding recorded by the trial Court was legal and proper and, therefore, dismissed the appeal.

Hence, the present appeal.

5. At the outset, it may be noted that the so called Substantial Question of law sought to be raised on behalf of the appellant is to the effect that whether the “royalty” payable towards the suit shop, as contended by the plaintiff, is nothing else but rent, as contended by the defendant, within the meaning of Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968. Consequently, the question was also sought to be raised to the effect that whether service of notice was proper.

6. Now, the question of service of notice is determined by both the Courts below concurrently and held that it was proper and, therefore, it cannot be said to be a Substantial Question of law and, hence, it cannot be considered at all. Similarly, both the Courts below have concurrently held that the amount payable towards the suit shop was royalty and not rent. It would be, in my considered view, clearly a question of fact and cannot be considered as question of law, leave aside the Substantial Question of law.

7. As laid down by the Apex Court, time and again, the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of Civil Procedure Code. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible.

8. Be as it may, on perusal of the entire record it is clear therefrom that both the Courts have appreciated the entire evidence in its proper perspective and as such it would call for no interference. In the result, appeal stands dismissed with no order as to costs. Consequently, civil application no. 96 of 2006 also stands dismissed with no order as to

costs.

P.V. KAKADE, J.

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